IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELIZABETH BROWN, f/k/a ELIZABETH SCHENCK, on behalf of herself and all others similarly situated, Plaintiff,	:	CIVIL ACTION
v.	:	NO. 05-0498
CARD SERVICE CENTER and CARDHOLDER MANAGEMENT SERVICES, Defendants.	:	

Memorandum and Order

YOHN, J. June ___, 2005

Plaintiff Elizabeth Brown filed this purported class action suit against defendants Card Service Center and Cardholder Management Services (collectively "CSC"), alleging that a debt-collection letter sent to her (and to numerous other Pennsylvania residents) by CSC violates the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.* Currently pending before the court is CSC's motion to dismiss plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(6). CSC contends that, as a matter of law, the letter does not violate the FDCPA.

For the following reasons, CSC's motion will be granted.

FACTUAL & PROCEDURAL BACKGROUND

On February 4, 2004, CSC sent to plaintiff a letter seeking payment on a consumer credit card debt CSC alleged to be due.[1] The letter stated, in pertinent part:

[1] Plaintiff's marital status has changed since this time. The letter was addressed to Elizabeth Schenck, plaintiff's former name. Plaintiff is now known as Elizabeth Brown.

> You are requested to contact the Recovery Unit of the Card Service Center at 1-877-487-5583 between the hours of 8:00 a.m. and 9:30 p.m. E.S.T., to discuss your account.
>
> Refusal to cooperate could result in a legal suit being filed for collection of the account.
>
> You now have five (5) days to make arrangements for payment of this account. Failure on your part to cooperate could result in our forwarding this account to our attorney with directions to continue collection efforts. In any correspondence with us, please refer to the above account number.

CSC Letter, Exh. A to Amended Complaint. Plaintiff alleges that despite the language in the letter, the matter was never referred to CSC's attorney, nor was any legal action taken against her. Amended Complaint at ¶¶ 11-14.

On February 3, 2005, plaintiff filed a class action complaint in this court and later amended it. The amended complaint alleges that the letter sent to her (and to numerous other Pennsylvania residents) violates the FDCPA, in that it "constitutes a false statement or implication that legal action is imminent, and/or that referral to CSC's attorney is imminent, when such is not the case." *Id.* at ¶ 16. Plaintiff alleges that CSC does not refer alleged debts to an attorney, but only refers them to another collection agency. *Id.* at ¶ 17. CSC then filed the pending motion to dismiss the amended complaint, plaintiff responded, CSC filed a reply, plaintiff filed a notice of supplemental authority, and CSC filed a response thereto.

MOTION TO DISMISS STANDARD

In ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6), courts must accept as true all well-pled allegations in the complaint, and any reasonable inferences that may be drawn therefrom, to determine whether "under any reasonable reading of the pleadings, the plaintiff

may be entitled to relief." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996); *Colburn v. Upper Darby Township*, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted). Although courts must construe the complaint in the light most favorable to the plaintiff, they need not "accept as true unsupported conclusions and unwarranted inferences." *Schuylkill Energy Res. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997).

Courts will grant a motion to dismiss "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). "The issue is not whether [the claimant] will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997).

While courts ruling on motions to dismiss generally "may not consider matters extraneous to the pleadings," *In re Burlington Coat Factory Dec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997), such courts may consider documents "integral or explicitly relied on in the complaint," such as the debt collection letter in the present case. *Id.* (quoting *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1220 (1st Cir. 1996)).

DISCUSSION

"In 1977 Congress enacted the FDCPA 'to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses.'" *Dutton v. Wolpoff & Abramson*, 5 F.3d 649, 653 (3d Cir. 1993) (quoting 15 U.S.C. § 1692(e)). The FDCPA states, in pertinent part, that a "debt collector may not use any false, deceptive, or misleading representation or means in connection

with the collection of any debt." 15 U.S.C. § 1692e. "The sixteen subsections of section 1692e provide a nonexhaustive list of practices that fall within the statute's ban." *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62 (2d Cir. 1993). One of these proscribed practices is "[t]he threat to take any action that cannot legally be taken or that is not intended to be taken." 15 U.S.C. § 1692e(5).

"In determining if a defendant's communications were false, deceptive or misleading within the meaning of § 1692e, courts apply the 'least-sophisticated-consumer' standard." *King v. Arrow Fin. Servs., LLC*, No. 02-0867, 2003 U.S. Dist. LEXIS 13259, at *7 (E.D. Pa. July 31, 2003) (citing *Swanson v. S. Or. Credit Serv., Inc.*, 869 F.2d 1222, 1227 (9th Cir. 1988); *Dutton v. Wolhar*, 809 F. Supp. 1130, 1135 (D. Del. 1992)); *see also Smith v. Transworld Sys., Inc*, 953 F.2d 1025, 1028 (6th Cir. 1992); *Jeter v. Credit Bureau*, 760 F.2d 1168, 1175 (11th Cir. 1985). Under this standard, "whether the initial communication violates the FDCPA depends on whether it is likely to deceive or mislead a hypothetical 'least sophisticated debtor.'" *Terran v. Kaplan*, 109 F.3d 1428, 1431 (9th Cir. 1997) (quotations omitted). The Third Circuit has stated that the "basic purpose of the least-sophisticated-consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd," and that "[t]his standard is consistent with the norms that courts have traditionally applied in consumer-protection law." *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (quoting *United States v. Nat'l Fin. Servs., Inc.*, 98 F.3d 131, 136 (2d Cir. 1996)).

Plaintiff alleges that the CSC debt collection letter violates § 1692e, and more specifically § 1692e(5), because it is "false, deceptive, or misleading," in that it threatens legal action when none was intended to be taken. CSC contends that even if plaintiff is correct that no legal action

was intended to be taken, the letter still does not violate the FDCPA, because as a matter of law, it does not threaten any action. CSC asserts that the "letter plainly states . . . merely that the failure to make arrangements for payment 'could' result in legal action," and that "courts have repeatedly confirmed that it is fully permissible for debt collectors to refer to the possibility of legal action." Def. Br. at 1-2. CSC argues that plaintiff's characterization of the letter as one threatening legal action is a distortion of the actual language used in it, and that CSC's use of the word "could" renders the letter compliant with the FDCPA.

Pertinent Third Circuit authority is scarce. In *Crossley v. Lieberman*, 868 F.2d 566 (3d Cir. 1989), the following language, which the plaintiff alleged to be violative of § 1692e, was contained in a debt collection letter sent by the defendant, an attorney:

> The above matter has been referred to me for collection. I am obligated to demand immediate payment of the full amount of the plaintiff's damages and costs as stated above.
>
> Unless I receive payment in full within one week from the date of this letter, I will be compelled to proceed with suit against you. This can result in the listing of your property, either Real Estate of Personalty, for forced Sale by the Sheriff, after appropriate legal proceedings have been concluded.
>
> Such action will result in additional expense to you, for the Court fees and Sheriff's costs.

Crossley, 868 F.2d at 567. The defendant argued that the letter was "non-threatening, non-violent and non-offensive," and that "the only reasonable conclusion from the letter is that if the debtor did not pay the debt, which was then due and owing, that a decision would be made at the end of that week concerning the need to proceed with litigation." *Id.* at 571. The Third Circuit disagreed with the defendant, finding that "[s]uch an interpretation ignores the clear wording of

the letter." *Id.* The court concluded that the language used did "not reflect a decision-making process," but instead implied that legal action was imminent. *Id.* Thus, the court concluded that the letter did violate the FDCPA. *Id.* at 572.

Clearly, the letter at issue in the present case is not nearly as threatening as the one in *Crossley*. First, the fact that the CSC letter was sent by a collection agency, and not an attorney, is an important one, because the *Crossley* court pointed out that "[a]buses by attorney debt collectors are more egregious than those of lay collectors because a consumer reacts with far more duress to an attorney's improper threat of legal action than to a debt collection agency committing the same practice." *Crossley*, 868 F.2d at 570. Second, the letter in *Crossley* stated that unless payment on the debt was made within one week, suit "will" proceed. *Id.* at 567. As CSC points out, the letter at issue here states only that failure to cooperate "could" result in legal action. Finally, the letter in *Crossley* not only threatened litigation, but also mentioned the possible ramifications of litigation, including a forced sale of property. *Id.* The CSC letter did no such thing.

However, just because the CSC letter does not rise to the level of the letter in *Crossley* does not mean that it is not violative of the FDCPA. The Third Circuit has yet to address a debt collection letter containing a less-certain statement of an intent to take legal action. In light of this fact, the parties have cited numerous cases from several jurisdictions dealing with the issue.

CSC points to several cases in which the respective courts have found debt collection letters to be compliant with the FDCPA, and § 1692e in particular. In *Jenkins v. Union Corp.*, 999 F. Supp. 1120 (N.D. Ill. 1998), the court held that "[f]or a collection letter to threaten legal action under § 1692e(5), it must communicate that a lawsuit is not merely a possibility, but that a

decision to pursue legal action is either imminent or has already been made." *Jenkins*, 999 F. Supp. at 1136. In light of that standard, the court found the following language in a debt collection letter not to violate § 1692e(5):

> As Collection Manager of Transworld Systems Inc., I thought it important to state our intentions regarding your debt. The economic feasibility of some type of litigation by our client has not been determined.
>
> However, please understand that if legal action were to be undertaken, it would be costly and time-consuming for both parties. The loser of such an action would probably be subject to court costs and/or attorney fees, if applicable . . . .
>
> It is not my intention to threaten or alarm you about this matter but merely to point out the problems of refusing to pay what appears to be a just and legal debt.

Id. at 1127-28. In coming to this decision, the *Jenkins* court noted that the letter was not from an attorney, that the "letter's reference to litigation lacks imminence," and that it was basically a "lawful reminder that litigation is a step available in the debt collection process." *Id.* at 1137-38.

In *Combs v. Direct Mktg. Credit Servs., Inc.*, No. 98-2857, 1998 U.S. App. LEXIS 32670 (7th Cir. Dec. 29, 1998),[2] the court applied the standard from *Jenkins* and found that the collection letter at issue, which stated that "we advise you to consult with your attorney regarding your liability," did not violate the FDCPA. *Combs*, 1998 U.S. App. LEXIS 32670, at *6. The court found the letter to be a "moderate communication" that made "neither express nor implied threats of current or imminent litigation." *Id.* Similarly, in *Madonna v. Acad. Collection Serv., Inc.*, No. 95-0875, 1997 WL 530101 (D. Conn. Aug. 12, 1997), the court concluded that a debt collection letter that stated that the creditor "may choose to pursue legal action" was not violative

[2] The court notes that this case is non-precedential.

of § 1692e. *Madonna*, 1997 WL 530101, at *6. The court found that "the statement . . . indicates that legal action is an option available to the creditor, who *may* indeed choose to take advantage of it." *Id.* at *7 (italics in original).

In *Knowles v. Credit Bureau of Rochester*, No. 91-14S, 1992 WL 131107 (W.D.N.Y. May 28, 1992), the court held that the following language was not violative of the FDCPA: "Failure to pay will leave our client no choice but to consider legal action." *Knowles*, 1992 WL 131107, at *1. In *Smith v. Transworld Sys., Inc.*, No. 3-96-166, 1997 WL 1774879 (S.D. Ohio July 31, 1997), the court concluded that a collection letter containing the words "further collection procedures," "legally due," "protracted and unpleasant collection effort," "litigation," "legal action," "court costs," "attorney fees," "court action," "judgment," "garnishment," "execution," "voluntary settlement," "and no defense to this claim" was not violative of § 1692e, because "those words and phrases, read in the context in which they appear in the collection letters, do not establish, as a matter of law, that the Defendants threatened imminent legal action against the Plaintiff." *Smith*, 1997 WL 1774879, at *2. In *Riveria v. MAB Collections, Inc.*, 682 F. Supp 174 (W.D.N.Y. 1988), the debt collector sent a letter stating that "legal action may be necessary in order to collect this bill" to the alleged debtor. *Riveria*, 682 F. Supp. at 178. The court concluded that "[e]ven an unsophisticated person would realize this statement to mean that because he has allowed his debt to remain unpaid, a suit *may be brought* to collect the amount owed." *Id.* at 179 (italics added). Thus, the court concluded that the statement was not violative of § 1692e.

Not surprisingly, plaintiff has cited several cases in which the respective courts have found collection letters to be violative of the FDCPA. In *Buzoiu v. Risk Mgmt. Alternatives, Inc.*,

No. 03-3579, 2003 U.S. Dist. LEXIS 23809 (E.D. Pa. Sept. 15, 2003),[3] the letter sent to the alleged debtor contained an offer to settle the debt for a lesser amount than what was actually owed, if the alleged debtor remitted payment by April 23, 2003. *Buzoiu*, 2003 U.S. Dist. LEXIS 23809, at *2. The letter then stated that "[i]f you do not take advantage of this offer, we will proceed with our normal collection efforts." *Id.* The plaintiff asserted that the letter violated § 1692e by being false and misleading, and by threatening action that the collection agency did not intend to take, because it "falsely implied that the settlement offer was a one-time event, and would terminate after April 20, 2003." *Id.* The defendant moved to dismiss on the grounds that the letter "neither stated that the collection agency was conveying a 'one time' offer, nor did it threaten to bring a lawsuit if the settlement amount was not received by the deadline set forth in the letter." *Id.* at *7. The court denied the motion, finding that "[w]hile the ['if you do not . . . .']

[3] Plaintiff cites two other cases from the Eastern District of Pennsylvania, but as CSC points out, they are inapposite. In *Tenuto v. Transworld Sys., Inc.*, No. 99-4228, 2000 U.S. Dist. LEXIS 22690 (E.D. Pa. Oct. 2, 2000), the court granted summary judgment in favor of the plaintiff because "defendant used a misleading representation or deceptive means in an attempt to collect a debt by stating that garnishment *could* occur in circumstances where it could not under applicable state law." *Tenuto*, 2000 U.S. Dist. LEXIS 22690, at *1 (italics added). Thus, the *Tenuto* court concluded that the letter at issue violated the FDCPA because it was "a misrepresentation of judgment creditors' remedies." *Id.* at *3 n.1. The *Tenuto* court was not called upon to decide whether the defendant's statement in the letter that "post judgment remedies . . . may include wage or bank account garnishment" constituted a "threat" under § 1692e(5), because even mentioning garnishment as a possibility was misleading. In fact, as CSC points out, the *Tenuto* court distinguished cases "involv[ing] a purported threat of suit," including *Jenkins*. *Id.* In *Brown v. Law Offices of Butterfield, Joachim, Schaedler & Kelleher*, No. 03-5850, 2004 U.S. Dist. LEXIS 9822 (E.D. Pa. May 27, 2004), the defendant sent the alleged debtor a collection letter that stated that "if payment in full is not received . . . within five (5) days from receipt of this letter . . . appropriate legal proceedings *may* begin." *Brown*, 2004 U.S. Dist. LEXIS 9822, at *13 (italics added). However, the court dealt with the "may" language only in the context of § 1692g, in deciding whether the defendant provided the plaintiff with the requisite validation notice. *Id.* at *14. Just as in *Tenuto*, the *Brown* court did not have the occasion to decide whether the letter "threatened" action under § 1692e(5).

sentence does not use the term 'litigation' or 'lawsuit,' the least sophisticated consumer could plausibly interpret the phrase 'normal collection efforts' as including some sort of eventual court action." *Id.* at *8.

In *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22 (2d Cir. 1989), the letter sent to the alleged debtor stated that "Notice Is Hereby Given That This Item Has Already Been Referred for Collection Action," "We Will At Any Time After 48 Hours Take Action As Necessary And Appropriate To Secure Payment In Full," and "Pay This Amount Now If Action Is To Be Stopped." *Pipiles*, 886 F.2d at 25. The court concluded that "[a]lthough it is a close question," the letter violated § 1692e, because "[t]he clear import of the language, taken as a whole, is that *some* type of legal action has already been or is about to be initiated and can be averted from running its course only by payment." *Id.*

In *Bentley*, the collection agency sent a letter to the alleged debtor stating that "[y]our creditor . . . ha[s] instructed us to proceed with whatever legal means is necessary to enforce collection." *Bentley*, 6 F.3d at 61. This letter was followed by another letter, which contained the following language:

> This office has been unable to contact you by telephone, therefore your delinquent account has been referred to my desk where a decision must be made as to what direction must be taken to enforce collection.
>
> Were our client to retain legal counsel in your area, and it was determined that suit should be filed against you, it could result in a judgment. Such judgment might, depending upon the law in your state, include not only the amount of your indebtedness, but the amount of any statutory costs, legal interest, and where applicable, reasonable attorney's fees.
>
> No legal action has been or is now being taken against you.

Id. at 61-62. The court determined that the least sophisticated consumer "would interpret this language to mean that legal action was authorized, likely and imminent," and thus "these statements are 'false, deceptive, [and] misleading' within the meaning of the FDCPA." *Id.* at 62 (citation omitted).

In *Baker v. G.C. Servs. Corp.*, 677 F.2d 775 (9th Cir. 1982), the debt collection letter stated that "[i]t is our policy to attempt to settle these matters out of court before making any decision whether to refer them to an attorney for collection . . . Unless we receive your check or money order, we will proceed with collection procedures." *Baker*, 677 F.2d at 778-79. The court, adopting the conclusion of the district court below, held that the language of the letter "create[d] the impression that legal action by defendant is a real possibility . . . [and] a consumer could legitimately believe that 'further collection procedures' meant court action." *Id.* at 779.

In *Nat'l Fin. Servs.*, the defendant collection agency sent several letters to the alleged debtor. *Nat'l Fin. Servs.*, 98 F.3d at 133. "A representative letter . . . specified a deadline for payment, and then stated":

> If you fail to pay your bill by the DEADLINE, we will then take the appropriate action. Remember your attorney will also want to be paid. An envelope is enclosed for your payment . . .
>
> YOUR ACCOUNT WILL BE TRANSFERRED TO AN ATTORNEY IF IT IS UNPAID AFTER THE DEADLINE DATE!!!

Id. The court concluded that these letters were violative of the FDCPA, because while the collection agency was literally correct in its argument that it was simply stating irrefutable facts, "we do not believe that any consumer could reasonably believe that NFS intended to provide a public service by informing him about the basic functions and fee requirements of attorneys." *Id.*

at 137. In addition, four subsequent letters were printed on the letterhead of the defendant attorney and stated as follows:

> Please note I am the collection attorney who represents American Family Publishers. I have the authority to see that suit is filed against you in this matter . . . unless this payment is received in this office within five days of the date of this notice, I will be compelled to consider the use of the legal remedies that may be available to effect collection . . .
>
> I am the collection attorney hired by American Family Publishers to protect their interests in the United States. I have filed suits and obtained judgments on small balance accounts just like yours. My authority to collect these accounts includes the enforcement of judgments . . .
>
> Law Offices – Demand Notice. You have ten days to pay your bill in full. Continued failure to pay will result in further collection activity. Only your immediate payment will stop further legal action.
>
> Your account may now be for sale . . . accounts like yours, that are sold . . . run the risk that the buyer will file suit against them. Judgment can result in assets being seized. Instructions have been given to take any action, that is legal, to enforce payment.

Id. at 134. The court concluded that these letters also violated § 1692e, because, at least in part, "[u]sing the attorney language conveys authority, instills fear in the debtor, and escalates the consequences." *Id.* at 137.

Finally, in *Uyeda v. J.A. Cambece Law Office, P.C.*, No. 04-4312, 2005 U.S. Dist. LEXIS 9271 (N.D. Cal. May 16, 2005), the court held that "even equivocal language can constitute an impermissible threat under § 1692e," and rejected the defendants' argument that their collection letters did not use deceptive language because they used words like "might." *Uyeda*, 2005 U.S. Dist. LEXIS 9271, at *10-11. The collection letter at issue, which was sent by an attorney on the firm's letterhead, stated as follows:

> If you continue to ignore this matter, we may have no option but to recommend to our client that it exhaust whatever measures are available to collect this debt through local counsel in your state. We regret having to take this step but your failure to pay this bill has left us essentially with no other option.
>
> Please call our office immediately. The toll free number is . . . .

Id. at *2-3.

After reviewing the applicable case law, the court concludes that the debt collection letter in the present case is more analogous to those in *Jenkins*, *Madonna*, *Knowles*, *Smith*, and *Riveria*, in that the CSC letter does not threaten imminent legal action against plaintiff and in no way indicates that action has already been undertaken. I conclude that the letter is a "lawful reminder that litigation is a step available in the debt collection process," *Jenkins*, 999 F. Supp. at 1137-38, and that CSC "*may* indeed choose to take advantage of it." *Madonna*, 1997 WL 530101, at *7 (italics in original).

In four of the cases cited by plaintiff (in which the respective courts found a violation of the FDCPA), the letters at issue stated that action "will" take place regarding the respective plaintiffs' delinquent accounts. *See Buzoiu*, 2003 U.S. Dist. LEXIS 23809, at *2; *Pipiles*, 886 F.2d at 25; *Baker*, 677 F.2d at 778-79; *Nat'l Fin. Servs.*, 98 F.3d at 133. In addition, while the letters in *Bentley* and *Uyeda* may at first glance appear to be tame when compared to the CSC letter (the follow-up letter in *Bentley* stated that "no legal action has been or is now being taken against you," and the letter in *Uyeda* stated that "we may have no option but to recommend" further measures), the court notes that the initial *Bentley* letter stated quite clearly that the creditor had "instructed us to proceed with whatever legal means is necessary to enforce collection," and that the *Uyeda* letter was from an attorney on the attorney's letterhead. *Bentley*, 6 F.3d at 61-62; *Uyeda*, 2005 U.S. Dist LEXIS 9271, at *2-3. The language in the CSC letter

does not rise to the level of threat of this statement in the *Bentley* letter. With reference to *Uyeda*, as stated previously, the Third Circuit has commented that a "consumer reacts with far more duress to an attorney's improper threat of legal action than to a debt collection agency committing the same practice." *Crossley*868 F.2d at 570.

As CSC repeatedly points out, the letter at issue in the present case states only that legal action and referral to an attorney "could" result from plaintiff's non-cooperation. While this may seem to be a matter of mere semantics to some, words do have meanings. The court is mindful of the remedial purpose of the FDCPA and the fact that "it should be construed liberally in favor of the consumer," *Johnson v. Riddle*, 305 F.3d 1107, 1117 (10th Cir. 2002) (citations omitted), but the court concludes, similarly to the court in *Riveria*, that even the least sophisticated consumer "would realize this statement to mean that because he has allowed his debt to remain unpaid, a suit *may be brought* to collect the amount owed." *Riveria*, 682 F. Supp. at 179 (italics added). The letter neither states nor implies that legal action is imminent, only that it is possible. Thus, the court concludes that the CSC letter poses no "threat" pursuant to § 1692e(5), and because the letter simply advises plaintiff of options available to CSC, the letter is not "false, deceptive, or misleading" under § 1692e, even if action were not intended to be taken.

CONCLUSION

For the above-stated reasons, CSC's motion to dismiss will be granted.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELIZABETH BROWN, f/k/a ELIZABETH SCHENCK, on behalf of herself and all others similarly situated, Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 05-0498
CARD SERVICE CENTER and CARDHOLDER MANAGEMENT SERVICES, Defendants.	:	

Order

And now, this _____ day of June 2005, upon consideration of defendants' motion to dismiss plaintiff's amended complaint for failure to state a claim upon which relief can be granted, filed pursuant to Fed. R. Civ. P. 12(b)(6), plaintiff's response, defendants' reply, plaintiff's notice of supplemental authority, and defendants' response thereto, it is hereby ORDERED that the motion is granted, and plaintiff's amended complaint is dismissed without prejudice. Defendants shall produce copies of defendants' other letters to plaintiff discussed in the telephone conference with the court on May 3, 2005 within ten days of the date of this order, and plaintiff may file a second amended complaint, if she can do so within the strictures of Fed. R. Civ. P. 11, within 30 days of the date of this order. If plaintiff does not do so, the dismissal will become a dismissal with prejudice at that time without further action of the court.

_____

William H. Yohn, Jr., Judge